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NORTHERN DISTRICT OF CALIFORNIA
SAN JOSE

Attorneys for Plaintiffs
THE BOARD OF TRUSTEES OF THE LELAND STANFORD
JUNIOR UNIVERSITY; STANFORD HOSPITAL AND
CLINICS; LUCILE PACKARD CHILDREN'S HOSPITAL AT
STANFORD

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
SAN JOSE DIVISION

C07 05415

MEJ

THE BOARD OF TRUSTEES OF THE
LELAND STANFORD JUNIOR UNIVERSITY,
STANFORD HOSPITAL AND CLINICS;
LUCILE PACKARD CHILDREN'S HOSPITAL
AT STANFORD,

Plaintiffs,

v.

ADVANCED BIOLOGICAL LABORATORIES,
S.A.,

Defendant.

Civil No. _____

**COMPLAINT FOR
DECLARATORY RELIEF**

DEMAND FOR JURY TRIAL

Plaintiffs The Board Of Trustees Of The Leland Stanford Junior University, Stanford
Hospital and Clinics, and Lucile Packard Children's Hospital at Stanford (collectively "Stanford")
by its undersigned attorneys, complains of Defendant and alleges as follows:

1. This is an action for a declaratory judgment of patent noninfringement and
invalidity for the purpose of resolving a question of actual controversy between the parties, as
alleged herein.

COMPLAINT FOR DECLARATORY RELIEF

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PARTIES

2. Plaintiff The Board Of Trustees Of The Leland Stanford Junior University is a non-profit body having corporate powers existing under the laws of the State of California, with its principal place of business within this district at Stanford University, Stanford, California, 94305.

3. Plaintiff Stanford Hospital and Clinics is a non-profit public benefit corporation having corporate powers existing under the laws of the State of California, with its principal place of business within this district at Stanford University, Stanford, California, 94305.

4. Plaintiff Lucile Packard Children's Hospital at Stanford is a non-profit public benefit corporation having corporate powers existing under the laws of the State of California, with its principal place of business within this district at Stanford University, Stanford, California, 94305.

5. On information and belief, Defendant Advanced Biological Laboratories, S.A. ("ABL") is a limited liability company organized under the laws of Luxembourg, having its principal place of business at 2, rue des Dalhias, L-1411 Luxembourg, Luxembourg. On information and belief, ABL is doing business in this judicial district.

JURISDICTION

6. This is an action for declaratory relief pursuant to 28 U.S.C. Sections 2201 and 2202. This Court has jurisdiction over the action pursuant to 28 U.S.C. Sections 1338(a) (action arising under and Act of Congress relating to patents) and 1331 (federal question). There is a substantial controversy between parties having adverse legal interests of sufficient immediacy to warrant the issuance of a declaratory judgment.

7. On information and belief, this Court has personal jurisdiction over ABL because ABL has constitutionally sufficient contacts with California so as to confer personal jurisdiction in this Court. On information and belief, Defendant conducts and solicits business within this district and elsewhere in California and derives substantial revenue from sales of products allegedly protected by the Patents-in-Suit and from the licensing of the Patents-in Suit within this district and elsewhere in California. In particular, ABL has availed itself of California courts by

1 obtaining a license to use Stanford's HIV Resistance interpretation algorithm in its products,
2 including those allegedly protected by the Patents-in-Suit.

3 **VENUE**

4 8. Venue as to Defendant ABL is proper in this judicial district under Title 28 of the
5 United States Code, Sections 1391(b), (c), and (d). A substantial part of the events giving rise to
6 the claims alleged herein occurred in this judicial district and ABL is subject to personal
7 jurisdiction in this district. On information and belief, ABL is an alien under 28 U.S.C. § 1391(d)
8 and may be sued in this district.

9 **INTRADISTRICT ASSIGNMENT**

10 9. Pursuant to Local Rule 3-2(c), the Intradistrict Assignment rules are inapplicable to
11 this Complaint.

12 **THE PATENTS-IN-SUIT**

13 10. On information and belief, Defendant ABL is the assignee of United States Patent
14 No. 6,081,786 ("the '786 patent") entitled "Systems, Methods and Computer Program Products
15 For Guiding The Selection of Therapeutic Treatment Regimens." The '786 patent on its face
16 indicates that it was assigned to Triangle Pharmaceuticals, Inc. A true and correct copy of the
17 '786 patent is attached as Exhibit A. On information and belief, the '786 patent was subsequently
18 assigned to Defendant ABL. A true and correct copy of the Assignments of Assignors Interests
19 for the '786 patent is attached as Exhibit B.

20 11. On information and belief, Defendant ABL is the assignee of United States Patent
21 No. 6,188,988 ("the '988 patent") entitled "Systems, Methods and Computer Program Products
22 For Guiding The Selection Of Therapeutic Treatment Regimens." The '988 patent on its face
23 indicates that it was assigned to Triangle Pharmaceuticals, Inc. A true and correct copy of the
24 '988 patent is attached as Exhibit C. On information and belief, the '988 patent was subsequently
25 assigned to Defendant ABL. A true and correct copy of the Assignments of Assignors Interests
26 for the '988 patent is attached as Exhibit D.

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EVENTS GIVING RISE TO THIS SUIT

12. Since the 1990's, researchers and physicians at Stanford have used the Stanford HIV Drug Resistance Database ("HIVDB") to help treat patients infected with HIV. The Database is a research tool, created in part by Dr. Robert W. Shafer, which places known HIV mutations into categories depending on how, if at all, a mutation correlates with resistance to a particular drug. For example, a doctor or researcher inputs the sequence of HIV taken from a patient or the particular mutations found in a patient into the Database. The Database then comes back with a list of categorized mutations: those with a strong correlation to drug resistance, weak correlations to drug resistance, or no correlation. Based on this information, the doctor or researcher determines what drugs might be used to treat the patient. A similar program is also used by the pathology department at Stanford University Hospital.

13. In July 2006, Dr. Chalom Sayada, the co-founder of ABL, met at Stanford with Dr. Robert W. Shafer to discuss the HIV-related databases that Dr. Shafer was developing. These included the HIVDB program, as well as early versions of Art-AiDE and other databases.

14. On July 17, 2006, Dr. Sayada met with in house counsel representatives for Stanford, including Luis Mejia, at Stanford to discuss whether Stanford would be interested in taking a license to the '786 and '988 patents.

15. On December 12, 2006, Dr. Sayada emailed Mr. Mejia to reiterate that ABL believed that Stanford's Databases and practices read on ABL's patents and required licenses "at the soonest term." Dr. Sayada also forwarded to Mr. Mejia a copy of claim charts purporting to demonstrate infringement of ABL's patents by Johnson & Johnson products and suggested that Johnson & Johnson took a license to ABL's patents.

16. On February 20, 2007, Dr. Sayada sent Stanford claim charts detailing how the use of Stanford's Databases in its hospital and research facilities allegedly infringed the '786 and '988 patents. Dr. Sayada stated in the email accompanying the charts that "our first analysis confirms and even actually accentuate[s] my earlier thoughts that the HIVDB product does require to be licensed to our patents." Dr. Sayada also identified that eCARE and ArtAiDE programs as products that competed with ABL's products and suggested that he could generate claim charts for

1 these products. According to Dr. Sayada, “Stanford’s products will be covered by a license to the
2 [‘786 and ‘988] patents moving forward [sic] (they will expire at least in 2018).” He also
3 emphasized that the HIVDB created commercial value for many diagnostic laboratories
4 worldwide.

5 17. On or about April 12, 2007, Dr. Sayada and representatives at Stanford held a
6 teleconference to address ABL’s concerns that Stanford’s activities required a license to the ‘786
7 and ‘988 patents.

8 18. On April 12, 2007, ABL’s litigation counsel, Mr. Ed Goldstein, emailed Stanford’s
9 representatives to introduce himself as counsel for ABL “in connection with enforcement through
10 licensing and/or litigation of ABL’s patents.” Mr. Goldstein informed Stanford that ABL had
11 already initiated litigation against another entity in the Eastern District of Texas. Mr. Goldstein
12 also sought an agreement that, pending licensing discussions, neither ABL nor Stanford would
13 initiate litigation. Stanford refused to enter into such an agreement.

14 19. On June 10, 2007, Dr. Sayada emailed representatives at Stanford again to arrange
15 a discussion of the claim charts and the finalization of an agreement between the parties. Dr.
16 Sayada also indicated that Stanford University appeared to be launching a new online product
17 “ArtAID” [sic] that ABL believed required a license to its patents.

18 20. On July 28, 2007, Dr. Sayada contacted Stanford emphasizing that ABL was
19 “actively enforcing the rights of [its] patents” and reiterating that Stanford’s recent launch of an
20 HIV drug resistance service “shall be licensed to our patent.”

21 21. On August 17, 2007, Stanford’s representative, Mr. Mejia, stated to Dr. Sayada that
22 Stanford believed that “there are significant and insurmountable invalidity challenges to the ABL
23 patents (‘786 and ‘988)” and pointed to two prior art references as invalidating those patents.
24 Based on the invalidity challenges, Mr. Mejia informed Dr. Sayada that “further licensing
25 discussions or other action on the part of Stanford are [not] warranted at this time pending ABL’s
26 responses. . .”

27 22. On September 24, 2007, Dr. Sayada responded to Mr. Mejia’s August 17th email
28 by reiterating that “we [*i.e.*, ABL] do think that Stanford’s practices, both at the Hospital and the

1 University, require a license to ABL patents, on the HIV [database] first and also on some new
2 products recently released as well. . . .”

3 23. Plaintiff Stanford therefore seeks a judicial determination and a declaration of the
4 respective rights and duties of Plaintiff and Defendant with regard to the '786 and '988 patents
5 and Plaintiff's Databases. There is a definite and concrete dispute between Stanford and ABL of a
6 real and substantial nature. A determination and declaration that Stanford has not infringed the
7 '786 and '988 patents and that the '786 and '988 patents are invalid would constitute specific
8 relief of a conclusive character.

9
10 **FIRST CLAIM FOR RELIEF**
(Declaratory Relief as to the '786 Patent)

11 24. Stanford incorporates by reference paragraphs 2 through 23 above as though fully
12 set forth herein.

13 25. Stanford is not directly infringing, contributorily infringing, or actively inducing
14 others to infringe any valid, properly construed claim of the '786 Patent either literally or under
15 the doctrine of equivalents.

16 26. Stanford has not willfully infringed any claim of the '786 patent.

17
18 **SECOND CLAIM FOR RELIEF**
(Declaratory Relief as to the '988 Patent)

19 27. Stanford incorporates by reference paragraphs 2 through 26 above as though fully
20 set forth herein.

21 28. Stanford is not directly infringing, contributorily infringing, or actively inducing
22 others to infringe any valid, properly construed claim of the '988 Patent either literally or under
23 the doctrine of equivalents.

24 29. Stanford has not willfully infringed any claim of the '988 patent.

25
26 **THIRD CLAIM FOR RELIEF**
(Declaratory Relief as to the '786 Patent)

27 30. Stanford incorporates by reference paragraphs 2 through 29 above as though fully
28 set forth herein.

1 31. The '786 Patent is invalid and/or unenforceable because, inter alia, the '786 patent
2 was not obtained in a manner consistent with and required by the provisions of Title 35 of the
3 United States Code, and in particular because it fails to comply with at least the required
4 conditions for patentability under 35 U.S.C. §§ 102, 103, or 112.

5
6 **FOURTH CLAIM FOR RELIEF**
 (Declaratory Relief as to the '988 Patent)

7 32. Stanford incorporates by reference paragraphs 2 through 31 above as though fully
8 set forth herein.

9 33. The '988 Patent is invalid and/or unenforceable because, inter alia, the '988 patent
10 was not obtained in a manner consistency with and required by the provisions of Title 35 of the
11 United States Code, and in particular because it fails to comply with at least the required
12 conditions for patentability under 35 U.S.C. §§ 102, 103, or 112.

13 **DEMAND FOR JURY TRIAL**

14 34. Pursuant to Fed. R. Civ. P. 38, Plaintiff Stanford hereby demands a trial by jury of
15 all issues so triable.

16 **PRAYER FOR RELIEF**

17 WHEREFORE, STANFORD prays for judgment against Defendant as follows:

18 A. A declaratory judgment that Plaintiffs do not infringe, either literally or under the
19 doctrine of equivalents, contribute to the infringement of, induce the infringement of, or willfully
20 infringe any claim of United States Patent Nos. 6,081,786 or 6,188,988;

21 B. A declaratory judgment that each of the claims of the United States Patent Nos.
22 6,081,786 or 6,188,988 is invalid and/or unenforceable;

23 C. That Defendant, its subsidiaries, affiliates, parent, successors, assigns, officers,
24 agents, servants, employees, attorneys, and all persons acting in concert or in participation with
25 them, or any of them, be enjoined from asserting any claim of United States Patent Nos. 6,081,786
26 or 6,188,988 against Plaintiffs;
27
28

1 D. That this case be deemed exceptional and that Plaintiffs be awarded its reasonable
2 attorneys' fees pursuant to 35 U.S.C. § 285;

3 E. That Plaintiffs be awarded its costs of suit; and

4 F. That Plaintiffs be awarded such other and further relief as the Court deems just and
5 proper.

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8 Dated: October 24, 2007

KARL J. KRAMER
KATHERINE NOLAN-STEVAUX
MORRISON & FOERSTER LLP

9
10
11 By: 

Karl J. Kramer

12 Attorneys for Plaintiffs
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14 THE LELAND STANFORD JUNIOR
15 UNIVERSITY; STANFORD
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